

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 567 of 2000

with

CIVIL APPLICATION NO. 4651 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHKUMAR TRIBHOVANDAS PATEL

Versus

RAMESHKUMAR RATILAL PATEL

Appearance:

MR HS MUNSHAW for Petitioners

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The sole question which has been raised before us in this appeal under Section 96 of the Civil Procedure Code, 1908 by the appellants-original defendants is that the impugned judgement of the Civil Court (S.D.), Bhavnagar, dated 5.5.2000 in summary Suit No. 1/2000 whereby a decree came to be passed for an amount of Rs. 1,48,600/- with interest, is erroneous, unjust and without giving sufficient opportunity.

2. The respondent is the original plaintiff who instituted the aforesaid summary case under Order 37 Rule 2 of the C.P.C. and the appellants-original defendants were served on 20.1.2000 with the summons of summary Suit based on promissory note of a sum of Rs. 1 lakh dated 8.1.1997. The appellants failed to move the court within a period of 10 days from that date. Not only that, they remained absent on the next date like that on 31.1.2000. They appeared late after three days.

3. The original defendants thereafter moved an application Exh. 8 showing the reasons for late appearance which also came to be rejected by the court on 24.3.2000. Unfortunately, copy of the said application is also not produced in this appeals for the reasons not known to us. The defendants again requested the trial court to wait for some time as they desired to file appeal and obtain stay against the order passed below Exh. 8. Such application was moved in writing at Exh. 50. It appears that by giving application the court was requested to stay the order below Exh. 8 upto 3.5.2000. That is the reason the Civil Court in the impugned judgement, has mentioned that instead of giving time from 24.3.2000 to 3.5.2000, the defendants have not obtained the stay from the higher court and have not produced the same. Therefore, the Trial Court has observed that the defendants have failed to observe the mandatory provision of Order 37 Rule 3 holding the appearance defective and not legal, decree came to be passed in terms of Order 37 rule 2(3) of the C.P.C. against the present appellants-original defendants.

4. It appears from the papers that the plaintiff and the defendants are the business persons and out of business relation an amount of Rs. 1 lakh came to be granted upon execution of the promissory note signed by partner of the original defendant No. 1 firm and that the amount has not been paid till today.

5. In this connection, we would like to highlight that the learned advocate appearing for the appellants

was heard on merits and when the court was about to pass the order of dismissal, time was sought to ascertain and to seek instructions from the appellants as to whether they would be able to make any assurance to this court that the disputed amount due and payable to the respondent would be deposited before the Trial Court on or before 31.8.2000. That is the reason why we granted time instead of immediately dictating the judgement. This was stated before us on 17.8.2000 and the matter was permitted to be mentioned after obtaining instructions on or before 31.8.2000. Thereafter, the matter was posted on 20.8.2000. However, it appears that no proceedings came to be mentioned. The matter came to be adjourned to 30.9.2000. On that day it could not be heard. Therefore, it has been notified today. When the matter was called out today, learned advocate Mr. Munshaw stated, upon instructions, that the appellants-original defendants are not in a position to make any payment as they are not helped by anybody.

6. Bearing in mind the celebrated principles of the summary procedure prescribed under Order 37 for expeditious hearing and the aforesaid facts and circumstances of the case and, also, the reasons stated by the Trial Court and in the light of the provisions of Order 37 Rule 2(3) of the C.P.C. , this appeal is totally meritless and is required to be dismissed at the threshold. Accordingly, this appeal is dismissed.

In view of the judgement passed in the main matter, no orders are passed on the Civil Application.

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